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Book Review. Frankfurter, F. and N. Greene, The Labor Injunction

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with relatively little adjustment. Although the above suggestions obviously require combination of various diverse fields, and accordingly contemplate departure from the usual, technically consistent method, yet it is submitted that the need can be met only in that manner if the various existing conditions remain constant. And Professor Derby's book demonstrates rather well his recognition of the problem.

Professor Derby has been sparing in his use of footnote references to other cases and to magazine articles, but this is not a serious limitation in a casebook designed for the use of first year students. A more serious defect is the absence of statutory material. Crimes vary so greatly in different jurisdictions, the departure from common law definitions is frequently so extreme, and phraseology is so important that the need for constant reference to criminal statutes is great. The classification of crimes against the person, against property and against the state is in line with modern authority. The cases are recent, well chosen and interesting.

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The Labor Injunction. By Felix Frankfurter and Nathan Greene. New York: The MacMillan Company. 1930. pp. 343. $5.00

Professor Frankfurter and Nathan Greene of the New York bar have cooperated to write a book at once scholarly and interesting in a field which has suffered more from prolific partisan publication than almost any other of the day.

Mechanically the book is perfect. Two hundred twenty-eight pages of the entire book (343 pp.) are devoted to the text proper; there are eight appendices, all containing interesting and valuable data; a table of cases and a table of statutes follow; and an excellent thorough index concludes the work.

The general treatment of the subject is that of the best law magazine articles, with some allowances made for the general reader. At least half of the book is devoted to footnote materials, assuredly indicative of enormous research. Fortunately, far from dismaying the general reader this is a happy arrangement which permits him to read in a little over a hundred, ordinary sized pages, the status of labor law in America; and at the same time, the student of the question may, by consulting the notes, have access to the most scholarly, carefully and completely compiled material in existence within the covers of one book.

Obviously, this is not a work which can be evaluated in a word; no single adjective of the most virulent partisan can carry the book to Olympus or relegate it to the indifferent stacks—that last, peaceful repository of so many a well intended work. A Harvard professor and a New York lawyer cannot be so readilly disposed of even if it is their just due; one may disagree with them, and no doubt many will, but they cannot be fairly or intelligently ignored.

A brief summary of the work will, perhaps not be amiss. English law, taken up by the states, until very recent times regarded collective action by laborers as conspiracy and in restraint of trade. Even when the act complained of was lawful by itself, as the withdrawal of his services by the individual laborer, a combination of workers to do the very same thing to-

gether (strike) was held to be a criminal conspiracy. Not until 1840 was it decided that the purpose or motive of a strike must be considered, and that its legality would depend upon the means used. The purpose of labor activities and the means by which they are pursued still constitute the chief inquiries of labor law.

Now is it notable that the injunction was used by courts of equity hundreds of years before labor unions were heard of. It was used almost exclusively to prevent irreparable injury to real estate. Not until 1868 was an injunction granted in England in a labor dispute. Its use in England in such cases was subsequently very rigidly restricted, but in the United States it took root and spread with amazing rapidity. By 1883 the practice was fairly general in this country. By the simple expedient of holding that a business was property, the courts found ample reason for extending this stringent remedy.

With the admission that the damage inflicted by the strike, the boycott and the picket could win immunity if the purpose was legal, a significant, allowable area of economic conflict was indicated by the courts. Where the object of the strike was higher wages, shorter hours of work or improved conditions, the benefit was seen to be direct and obvious and was held to be legal. But when the purpose was to strengthen the union by various methods, the object was held to be too remote to be legal. Hundreds of decisions limit and define the various means employed by labor organizations. And the courts, according to the authors have not been equipped with experience and attitude helpful to the solution of the economic conflicts. They quote approvingly Justice Holmes' remark that the decisions suggest "doubt whether judges with different economic sympathies might not decide such a case differently when brought face to face with the issue."

The procedure and proof underlying the granting of injunctions meet with severe criticism. The *Ex Parte* injunction, granted without a hearing and frequently even without notice to the union is particularly objectionable. The reason is that time is so vital in a labor dispute that the preliminary temporary injunction is generally permanent in effect. Furthermore in a great majority of cases in granting preliminary injunctions the courts rely entirely upon affidavits. No witnesses are summoned, examined or subjected to cross-examination.

Finally, the authors point out that the scope of the injunction has been inordinately wide. They have been vague and at the same time broad, indefinite and inclusive, and directed against every conceivable act and person. It is interesting to note that one of the very few decrees that meets with the approval of the authors was rendered in Norh Dakota by Judge Amidon in the Brosseau case (286 Fed. 414).

Perhaps the worst feature of all of the unfortunate aspects of the courts' intervention in labor disputes, as the authors see it, is the enforcement of the injunctions. The same judge who issues the order sits as judge and jury to determine whether it has been violated. Imprisonment for contempt, long a power of the chancery courts, appears tyrannical when applied to labor disputes, where naturally, feeling runs high. Without a trial by jury, the strikers may be sentenced to jail by the same man who issued the order. The authors present an enormous amount of evidence, most of it from very respectable quarters, to prove that this sort of thing arouses more disrespect

for the courts and rebellion in the hearts of the laborers than any other single factor in American life.

Curiously enough, legislation designed to relieve the unions from much of the rigidity and harshness of the existing laws has been so construed by the courts as to be of no assistance whatever to labor, and in many instances, actually to work greater hardships than existed prior to the passage of the intended ameliorating laws. This was the fate of the Clayton Act and other similar legislation. The book concludes with a discussion of a proposed bill designed to correct most of the existing evils.

This book is accordingly worth while for many reasons. It exemplifies, incidentallly, an excellent correlation of law and economics. Published immediately after the Encyclopedia of Social Sciences, one is again reminded of the necessity for all researchers in the social sciences to coordinate their efforts. The saying that there is only one social science, of which the various fields are divisions, is fair on its way to realization, and this book is a testimonial to the trend.

The book is essential to the student of labor problems, to the lawyer and to the political scientist. It is not only an excellent digest of labor law, but it illuminates the role of the courts in economic conflict and adjustment. To the sociologist the book amply demonstrates the agency of the courts as a force of social control. To the jurist, in addition to all the above factors, the book is interesting because it dwells upon the little understood judicial process; the changing rules and their causes, the diversity of view and frequently the diametric opposition of various courts, the adjustment of legal views in accordance with changing social, political and economic views, and the influence of psychological factors are all of abiding significance.

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